IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3242 of 2001.

1. Krishnarao Dhondiram Jadhav.

2. Ramdas alias Ramchandra
Dattatraya Patil. ... Petitioners.

V/s.

Nivruti Dhondi Patil. ... Respondent.

A.H. Palekar for the petitioners.

T.S. Ingale for the respondent.

CORAM V.C.DAGA, J.

DATED : 7th March,2006.

ORDER :

. Heard learned counsel for the rival parties. Perused petition.

2. This petition is directed against the order dated 29th March, 2001 passed by the Tahsildar, Palus in Debt Relief Case No.1 of 2000, whereby in exercise of powers under the provisions of the Maharashtra Debt Relief Act, 1976, the suit land has been released from the liability of debt with sum of Rs.800/-.

The Facts :
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3. The facts giving rise to the present petition are as under:

4. The dispute concerns with regard to Survey No.1724, admeasuring 1 H. and 92 Ares, assessed at Rs.6.40 and Gat No. 1785 admeasuring 0.92 Ares and assessed at Rs. 3 and situated at Palus, Taluka Palus, District - Sangli. ("the suit land" for short).

5. The respondent Shri Nivruti Dhondi Patil; being son of Dhondi and his uncle's son; one Shri Pandurang were close relatives. Pandurang was not made party to the original application, though both were co-sharers.

6. On 12th November, 1913, they borrowed Rs.800/-, against the mortgaged security of the suit land, from their sister Smt. Gangubai. The possession of the suit land was given to Smt.Gangubai.

7. On 22nd August, 1975, The Maharashtra Debt Relief Act, 1975 ("Debt Relief Act" for short) came into enacted which defines the term "debt" in section 2(e) to mean any liability, in cash or kind, outstanding on the appointed day, being a liability arising out of a loan (with interest, if the loan is taken by a worker, and with or without

interest, in any other case), whether secured or unsecured, due from a debtor; whether payable under a decree or order of any court or otherwise.

8. Further section 2(f) of the Debt Relief Act defined the term "debtor" means a marginal farmer, rural artisans, or rural labourer whose total income from all sources did not exceed two thousand and four hundred rupees during the year immediately before the 1st day of August, 1975 and a worker whose total income from all sources did not exceed, if living in an urban area; six thousand rupees during the year immediately before the said date, and if living elsewhere; four thousand and eight hundred rupees during that year.

9. Section 4 of the Debt Relief Act provides for discharge of certain debts and consequences thereof; under which debts stand liquidated and debtors are released from the debt.

10. Taking advantage of this Act, the respondent Nivruti alone without joining Shri Pandurang filed an application under the Debt Relief Act in the Court of Tahsildar and Executive

Magistrate, Palus to get himself released from the debt.

11. The petitioners filed their written statement contending that the said application in question is not maintainable and, prayed for dismissal of the same. It was pointed out that, earlier the respondent had filed Regular Civil Suit No. 207 of 1975 for possession of the mortgaged land. The said suit was dismissed by judgment and order dated 27th February, 1981 finding that the respondent had no concern whatsoever with the suit land.

12. Being aggrieved by the above judgment and order, the respondent had filed an appeal in the District Court, Sangli being Civil Appeal No. 153 of 1981. The said appeal came to be dismissed. It was held by the appellate Court that the respondent was not in possession of the land, that the plaintiff therein viz. Shri Krishnarao was in actual possession of the suit land since the time of his father for more than 30 years. This position was conceded by the respondent (appellant therein). The appellate Court was thus,pleased to dismiss the said appeal.

13. The petitioners then filed Regular Civil Suit No. 196 of 1975 in the Court of the learned Civil Judge, Junior Division, Tasgaon to seek injunction against respondent and another defendants.

14. The learned Civil Judge, vide his judgment and order dated 25th February, 1981, was pleased to hold that the petitioners did prove their title to the suit land; however, their juridical possession, over the suit land on the date of the suit was held proved. The learned Judge was pleased to decree the said suit in favour of the petitioners granting injunction against the respondent herein and restrained them from interfering with possession of the petitioners with respect to the suit land. It was also observed that the respondents did not know how their names came to be entered in the revenue record with respect to the suit land. The learned Civil Judge further held, in view of the admissions of the respondent, the ownership of the petitioners/plaintiffs over the suit land stood proved.

15. It appears from the record that father of the petitioner no.2,namely, Datta Bali Patil had purchased Survey No.500/9 admeasuring 1 H, assessed at Rs.1.12 from Shamrao son of Pandurang Patil and nephew of the respondent.

The Issue :
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16. In the aforesaid backdrop, the question which needs consideration is; whether the impugned order is legal and valid in the light of the subsequent transaction of sale of the mortgaged property by the mortgager to the mortgagee vide sale-deed dated 30th April,1923.

Consideration :
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17. Having heard the rival parties, factum of mortgage of land bearing Revenue Survey No. 500 admeasuring 7 A. and 24 G., to his sister Gangubai for Rs.800/- for the period of 15 years is not in dispute. Execution of sale deed dated 30th April, 1923 by the father of the respondent, viz. Shri Dhondi Ravji Patil in favour of son of the mortgagee, viz. Dhondi Sakharam Jadhav is also not in dispute. It is also not in dispute that Pandurang, one of the co-owners i.e. brother

of respondent-Nivrutti did not apply under the Debt Relief Act to seek shelter thereof. Under these circumstances, what is required to be considered is the fate of the suit property only to extent of 50% share of the respondent which he got it released under the provisions of the Debt Relief Act.

18. The Tahsildar, Palus in his impugned order dated 29th March, 2001 did not take into account the judgment and decree passed by the Civil Judge, Junior Division, Tasgaon. He only took into consideration the income of the respondent and concluded that total income of the respondent per annum was less than Rs. 6,000/-. The income from the agricultural property was not taken into account. Be that as it may, Suffice it to say that in view of execution of sale-deed in favour of father of the respondent no debt existed and,therefore, there was no question of invoking the provisions of Debt Relief Act.

19. The mortgage deed dated 12th November, 1913 provided 15 years period for redemption which stood expired on 12th November, 1928. However, in the meanwhile, since the suit land to the extent

of 50% share from Survey No. 500 admeasuring 3 A and 38 G. assessed at Rs. 5.94 was purchased for Rs.1,500/- from the father of the respondent by registered sale deed dated 30th April 1923 by Shri Dhondi Sakharam Jadhav, the son of the mortgagee, with the result, possession of the suit land remained with Shri Dhondi Sakharam Jadhav. The mortgagee of the suit land became owner of the half of the suit land. The documentary evidence in this behalf has already been placed on record.

20. Taking over all view of the matter and material available on record, the impugned order cannot be sustained. It is liable to be set aside.

. In the result, impugned order is set aside. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(V.C.DAGA, J.)